

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 192 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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GANGABEN RADHAKISHAN AHUJA

Versus

MANUMAL DHARMADAS

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Appearance:

MR GT DAYANI for Petitioner

MR KV SHELAT for Respondent No. 1

(In both Applications)

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 27/02/97

ORAL JUDGEMENT

Rule. Service of Rule waived by Mr.K.V.Shelat, learned Advocate for the Respondents in both the matters. By consent of parties the matters are taken up for final disposal today.

2. Both these Revision Applications under Section

29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1949 (for short "the Rent Act") are filed by the petitioner land-lady. They arise out of the Judgment dated 1st September 1995 rendered by the learned 3rd Joint District Judge, Ahmedabad (Rural) at Mirzapur, in Regular Civil Appeals No. 35/90 and 38/90. The learned Appellate Judge had dismissed Regular Civil Appeal No. 35/90 and allowed the Regular Civil Appeal No. 38/90 fixing the standard rent of the suit premises at Rs.55/p.m. exclusive of all taxes.

3. It is not in dispute that the petitioner land-lady filed Regular Civil Suit No. 647/85 for obtaining the arrears of rent at the rate of Rs.65/p.m. and for obtaining possession of the suit premises on the ground of personal requirement as well as on the ground of breach of terms of tenancy committed by the respondent - tenant. In so far as the grounds for eviction are concerned there are concurrent finding of facts on the evidence recorded before the learned trial Judge. However, in so far as fixation of standard rent and for that matter fixation of contractual rent is concerned there appears to be some legitimate and legal controversy. The learned Appellate Judge has tried to resolve the dispute, but he appears to have relied upon presumptions rather than the evidence. After having come to the conclusion that the rent receipt produced by the defendants were not genuine and after having also come to the conclusion that the defendant's evidence was not reliable the learned Appellate Judge has referred to the deposition of land-lady and has found out that she narrated different story with regard to Money Order of Rs.220/- as rent at the rate of Rs.55/- p.m. However, tender of rent by the defendant at the rate of Rs.55/p.m. is as per the defendant's dispute of the contractual rent being Rs.55/- p.m. In the same manner the demand of rent at the rate of Rs.65/- p.m. in the Suit notice is as per the case of the plaintiff. If this is the only material there was no reason why the plaintiff's case was not accepted. Having pointed out this glaring discrepancy Mr.K.V.Shelat, learned Advocate appearing for the respondent fairly conceded that in the absence of any material the contractual rent and for that matter the standard rent might be fixed at Rs.65/- p.m., but by way of concession the same might be fixed from 1.4.1997. Mr.Shelat made concession after referring to the material placed on record and to the judgment of the Appellate Court. He fairly conceded that there was no evidence to show that contractual rent at Rs.65/- p.m. could be said to be excessive and not the standard rent. Mr.Dayani, learned Advocate appearing for the petitioner land-lady

concedes that the standard rent of the suit premises might be fixed from 1.4.1997.

4. Bearing in mind the facts and circumstances of the case and the concession made by the learned Advocates appearing for rival parties, I am satisfied that the standard rent of the suit premises should be Rs.65/- p.m. exclusive of all taxes. However, the same shall have to be directed to be paid from 1.4.1997.

5. Rest of the Judgment and decree rendered by the trial Court as well as the Appellate Court, except the order with regard to the cost, shall have to be maintained. Following order is, therefore, passed :

6. The standard rent of the Suit premises is fixed at Rs.65/- p.m. exclusive of all taxes with effect from 1st April 1997. There shall be no order as to costs all through-out. Rest of the Judgment of the Appellate Court impugned in these Revision Applications is maintained. Rule made absolute only to the aforesaid extent in both the Revision Applications.

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